IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1191 OF 1986

M/s.Reliance Industries Ltd. ...Plaintiffs
vs.

M/s.Purna Synthetic Fabrics ...Defendants

Mr.C.D.Abuwalla with Ms Fouzia Shaikh i/b M/s.Dave & Co.for the Plaintiffss

CORAM: A.S.OKA,J.
DATE : AUGUST 13,2007

JUDGMENT:

1. The plaintiffs have filed a suit for recovery of sum of Rs.8,31,140.22 with interest on the sum of Rs.6,49,815.11 at the rate of 21%p.a from the date of suit till payment and future interest on the said amount of Rs.6,49,815.11 at the rate of 18%p.a from the date of Judgment till the payment and for costs of the suit.

2. It will be necessary to refer to the facts of the case in brief. According to the case of the plaintiffs between 8th December 1981 and 22nd December 1982, the plaintiffs sold and supplied to the defendants yarn at mutually agreed price at the aggregate value of Rs.7,15,927.91. The defendants signed the delivery challans acknowledging the receipt of the said goods. According to the case of the plaintiffs, defendants accepted the said goods without any objection as to its quality, quantity, price and contents thereof. According to

the case of the plaintiffs it was agreed that the payment would be made within a period of one month from the date of supply and it was provided that if the payment was not made within stipulated period, interest shall be charged at the rate of 21% p.a.

3. The case of the plaintiffs is that they issued credit notes for the goods returned by the defendants. According to the case of the plaintiffs, the credit notes were in the aggregate amount of Rs.61,112.80. It is stated that a part payment of a sum of Rs.5,000/- was made by the defendants on 20th November 1984. It is stated that the plaintiffs have maintained an account of the defendants in their books of accounts and at the foot of the said account, a sum of Rs.6,49,815.11 remains due and payable by the defendants to the plaintiffs.

4. As the defendants failed to pay the said amount, by a letter dated 12th June 1984, the Advocate for the Plaintiffs called upon the defendants to pay the outstanding amount with interest at the rate of 21% p.a. The defendants by reply dated 20th June 1984 came out with a case that there was no question of not paying any outstanding dues and requested for time to make necessary arrangement for payment. It is the case of the Plaintiffs that the defendants agreed and confirmed the liability to pay the outstanding amount.

5. The plaintiffs by their Advocate's letter dated 14th June 1985 gave details of the credit notes and part payments and called upon the defendants to pay outstanding amount with interest. By way of a reply, the defendants by their letter dated 4th July 1985 contended that the statement of account does not tally. They stated that they will start making payment by the end of July 1985. By plaintiffs Advocate's letter dated 11th July 1985 the defendants were called upon to depute their representative to tally the accounts. However, there was no response from the defendants. Therefore, the plaintiffs' Advocate by their letter dated 24th September 1985 called upon the defendants to make payment of the amount with interest thereon. A reliance has been placed in the plaint on the part payment in the sum of Rs.5,000/- made by the defendants on 20th November 1984 and the acknowledgement of the liability by the defendants by their letter dated 20th June 1984.

6. The defendants filed the written statement raising various contentions. It was contended that after process of weaving and dyeing, the defendants discovered that the yarn supplied by the plaintiffs from time to time was of sub-standard quality. In so far as letters dated 20th June 1984 and 4th July 1984 are concerned, the defendants contended that they were not aware of the same having been written by them and

contents were not binding on them. The defendants prayed for dismissal of the suit.

7. Issues were framed on 2nd February 2006 which read thus :

1) Whether the defendants prove that the suit is bad in law, misconceived and not maintainable as alleged in para 1 of the written statement?

2) Whether the defendants prove that the plaint does not disclose any cause of action and therefore should be dismissed with cost as alleged in para 2 of the written statement ?

3) Whether the defendants prove that this Hon'ble court has no jurisdiction to entertain, try and decide the suit as alleged in para 3 of the written statement ?

4) Whether the defendants prove that this suit is barred by the law of limitation as alleged in para 4 of the written statement ?

5) Whether the plaintiffs prove that they are entitled to a decree for the sum of Rs.8,31,140.22p with interest on Rs.69,815.11 at the rate of 21% p.a. from the date of suit till Judgment and at the rate of 18% p.a. from the date of Judgment till payment and cost of the suit ?

8. On 18th July 2007, the learned counsel for the plaintiffs tendered an affidavit in lieu of evidence of Shri B.K.Shah and the original documents. Therefore, the suit was fixed for recording of evidence on 9th August 2007. On that day, the examination-in-chief of Shri B.K.Shah was recorded. On that day Shri Page, Advocate appeared and stated that Shri S.B.Naik who had filed vakalatnama has sent an intimation by R.P.A.D to the defendants informing them that the said Advocate had decided to retire from the practice. An office copy of the said letter and the envelope containing the intimation which was returned by the postal authority were taken on record. Shri Page stated that the Defendants have not contacted Shri S.B.Naik, Advocate. As none appeared for the defendants and the defendants were not represented, cross examination was treated as closed. On 9th August 2007, counsel for the plaintiffs made a statement that he did not desire to examine any witness. Therefore, the suit was ordered to be listed on 10th August 2007 for hearing of the arguments. On that day, none appeared for the defendants. Though the arguments were heard, the Judgment was not dictated with a view to give one more opportunity to the defendants. Today, when the suit is called out, none appears for the defendants.

9. Shri B.K.Shah has stated in his affidavit that he was working as a Clerk with the plaintiffs at the time of filing

of the suit and he was conversant with the facts of the case.

10. The Plaintiffs have produced original delivery challans along with a list. The plaintiffs have also produced the original invoices. The plaintiffs have placed on record a xerox copy of a letter dated 20th June 1984 allegedly sent by the defendants to the Advocate for the plaintiffs. The plaintiffs have produced the letter dated 4th July 1985 sent by defendants to the Advocate for the plaintiffs.

11. In the letter dated 4th July 1995 the defendants have referred to the letter of the same date sent by the Advocate for the plaintiffs. In the said letter, the partner of the defendants has stated that the defendants are in financial difficulty. It is stated in the letter that the defendants shall start repayment from the current month. The Advocate for the plaintiffs responded on 11th July 1985 by fixing a meeting. It was stated in the letter sent by the Advocate for the plaintiffs that the representative of the defendants can attend the meeting for the purpose of comparing the accounts. However, the defendants did not respond. The documents produced by the Plaintiffs have been duly proved by the said witness of the Plaintiffs.

12. There is no cross examination made by the defendants of the said witness. This suit was proceeded exparte as the

defendants failed to remain present on the date on which the suit was fixed for hearing. The evidence of the said witness has remained unchallenged.

13. Hence, the plaintiffs have established that the defendants are liable to pay a sum of Rs.6,49,815.11. An office copy of the invoices produced on record shows that interest at the rate of 21% p.a. was to be charged if the bill was not paid by the due date. The plaintiffs have claimed interest at the rate of 21% p.a. from the date of default till the date of institution of the suit. In view of the stipulation in the invoice, the Plaintiffs are entitled to the interest as claimed.

14. The plaintiffs have claimed interest from the date of institution of the suit at the rate of 21% p.a. Considering the facts and circumstances of the case, interest will have to be fixed at the rate of 12% p.a. Issues framed in the suit are answered accordingly.

15. Hence, I pass the following order :

i) The suit is decreed as prayed with the modification that the interest at the rate of 12% p.a. will be payable on Rs.6,49,815.11 from the date of institution of the suit till the date of payment or realisation.

ii) Certified copy is expedited.

JUDGE